

# ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: Matthews Analyst: Kristina E. North Bill Number: AB 1910

Related Bills: None Telephone: 845-6978 Introduced Date: February 7, 2002

Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Acts Involving Fraudulently Obtained Refunds

## SUMMARY

This bill would allow:

- ◆ individuals to be prosecuted under the Revenue and Taxation Code (R&TC) for fraudulently obtaining state-issued income tax refunds by direct deposit refund (DDR) or any other method other than by a paper warrant; and
- ◆ the Franchise Tax Board (FTB) to recoup related investigation costs.

## PURPOSE OF THE BILL

The purpose of this bill is to make it easier to prosecute individuals who illegally obtain income tax refunds via DDR or any other method other than by a paper warrant.

## EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2003, and would apply to acts relating to state income tax refunds issued by DDR or any other method and related investigative costs on or after that date.

## POSITION

Support.

On March 6, 2002, the Franchise Tax Board voted 2-0 to sponsor the language included in this bill.

## ANALYSIS

### FEDERAL/STATE LAW

Under the R&TC, **existing state tax law** allows misdemeanor and felony charges to be filed in instances of criminal and willful violations of the state income tax laws. Under the Penal Code, existing state criminal law also allows misdemeanor and felony criminal charges for theft.

Board Position:

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Department Director

Date

Alan Hunter for GHG

03/21/02

The R&TC allows two criminal charges for endorsing and negotiating fraudulently obtained state income tax refund warrants. For the first, a misdemeanor charge for acts involving fraudulently obtained refunds, a civil penalty of up to \$5,000 and a criminal fine of up to \$10,000 can be assessed by the courts, as well as imprisonment in county jail for up to one year.

The second charge is a "wobbler" (either a misdemeanor or felony charge, as determined by the prosecuting attorney based on the level of intent) for acting with the intent to defraud. For this charge, a civil penalty of up to \$10,000 and a criminal fine of up to \$50,000 can be assessed by the courts, as well as imprisonment in county jail for up to one year or in state prison for up to three years.

### THIS BILL

**This bill** would expand the R&TC to allow individuals to be prosecuted for illegally obtaining income tax refunds via DDR or any other method except for warrants. This bill would allow individuals who procure a state income tax refund fraudulently or individuals who aid, abet, advise, encourage, or counsel an individual to fraudulently procure a state income tax refund to be prosecuted under the R&TC for obtaining state-issued income tax refunds by DDR or any other method except for warrants.

This bill also would allow FTB to recoup related investigation costs.

### IMPLEMENTATION CONSIDERATIONS

This bill does not require implementation by FTB, except that FTB would be allowed to recoup related investigation costs. It gives the district attorneys the discretion to prosecute individuals for unlawfully obtaining state income tax refunds issued by any means, such as direct deposit, which may save time and resources for the FTB, the district attorney, and the courts in the prosecution of these crimes.

### **PROGRAM BACKGROUND**

Beginning with tax year 1997, FTB implemented a pilot program allowing taxpayers who electronically filed (e-filed) their tax returns to have refunds directly deposited into their bank accounts. DDRs are now available for E-file, Tele-File, and paper returns.

Soon thereafter, criminals began using direct deposit in their refund fraud schemes. In 1998, FTB identified eight individuals filing fraudulent returns and received more than 50 state-issued income tax refunds. Of those 50 refunds, 25 instances involved DDRs and could not be prosecuted under the tax law because only those fraudulent refunds issued on paper warrants are specified as crimes. The individuals were charged with grand theft under the Penal Code. Generally, it is more difficult to prove the elements of the crime under a broad, general statute than by a more narrowly developed statute refining tax fraud.

### **OTHER STATES' INFORMATION**

As this bill would make minor changes with regard to the code under which taxpayers could be prosecuted with regard to fraudulent California income tax refunds via DDR, information on other states is not relevant.

## **FISCAL IMPACT**

This bill would not significantly impact the department's costs.

## **ECONOMIC IMPACT**

### Revenue Estimate

The magnitude of fraudulently obtained tax refunds directly deposited to individuals' bank accounts is not known. Based on departmental data for tax year 1997, DDRs represented only 2% of the total number of personal income tax refunds issued and 3% of dollar amounts.

The impact of this bill on improved taxpayer self-assessed reporting and additional penalty collections from fraudulent filers is unknown, but most likely insignificant in any given year since recipients of fraudulent refunds currently may be prosecuted under general criminal statutes.

## **LEGISLATIVE STAFF CONTACT**

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